In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 587

STATE FARM AUTOMOBILE INSURANCE COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. This is a companion case to *State Farm Mutual Automobile Insurance Company* v. *National Labor Relations Board,* No. 276, O.T. 1969, pending on petition for certiorari. In that case, the Board found that, under the Company's operational structure, each group of employees supervised by a divisional superintendent was sufficiently autonomous to constitute an appropriate bargaining unit; certified the Insurance Workers International Union, AFL–CIO, as the representative of claim representatives in the Company's Metropolitan divisional unit; and ordered the Com-

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pany to bargain with that union. The court of appeals, sitting *en banc,* enforced the Board's order. (Pet. App., No. 276, pp. 20a–38a, 39a–62a.) In the present case, the Board directed an election in the Nassau-Suffolk divisional unit; certified the American Communications Association, which won the election, as the representative of the claim representatives in that unit; and ordered the Company to bargain with that union. The court of appeals also enforced this order. (Pet. App., No. 276, pp. 63a–80a; Pet. App., No. 587, pp. 1a–6a.)

2. The first question presented (Pet., No. 587, p. 2) is the same as the second question presented in No. 276—*i.e.,* whether the Board abused its discretion to determine appropriate collective bargaining units by establishing a divisional unit rather than a statewide or multi-state unit as requested by the employer. For the reasons set forth in the Board's Brief in Opposition in No. 276, pp. 8–10, this issue does not warrant review by this Court.[1]

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[1] *Local 1325, Retail Clerks* v. *National Labor Relations Board,* 71 LRRM 2721 (C.A.D.C.), decided July 3, 1969, does not require a different conclusion. The court merely held that, while a single store unit, among others, might have been justified, it could not accept the Board's conclusion that a statewide unit was appropriate in that case, since it resulted in including "a 'distant' Rhode Island store and exclud[ing] a 'nearby' Massachusetts store" (*id.* at 2729).

3. The second question (Pet. No. 587, p. 2) is the same as that presented in the Board's petition for certiorari in *National Labor Relations Board* v. *Pepsi-Cola Bottling Company,* No. 469, O.T. 1969—*i.e.,* whether the Board is required to give plenary review to a regional director's determination of the unit appropriate for bargaining purposes before entering an unfair labor practice order based on that determination. But that issue is not properly presented in this case. For, although the unit determination here was made by the regional director and the Board declined to grant plenary review of that decision (Pet. App., No. 276, pp. 63a–64a, 72a), the regional director's decision was wholly based on the earlier unit determination involving the Company which was made by the Board itself (see Pet. App., No. 276, pp. 39–50a). Accordingly, for all practical purposes, there has been full Board consideration of the unit determination in this case.[2]

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[2] This conclusion is not impaired by the fact that, subsequent to the Board decision in the first case, the Company added a new divisional superintendent to the New York division who supervises some claim representatives who were formerly in the geographical areas included in the units found by the Board to be appropriate (Pet., No. 587, pp. 3–4). The Board, when it made its original unit determination, was fully aware of the prospect of such an increase in the number of divisional claim superintendents (see Pet. App., No. 276, pp. 42a, 66a; Joint App. filed with that petition, pp. 44a–45a).

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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